

90-755

NO. _____

Supreme Court, U.S.

FILED

SEP 16 1990

JOSEPH F. SPANIOL, JR.
CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1990

ELIZABETH WARNE, Petitioner

v.

**SUPERIOR COURT OF CALIFORNIA,
Respondent,**

v.

**KAISER PERMANENTE MEDICAL CENTER; SOUTHERN
CALIFORNIA PERMANENTE MEDICAL CENTER;
KAISER SELF INSURANCE PROGRAM; MICHAEL
STOLZBERG and STOLZBERG & SPENCER;
DR. JOHN SELLMAN, M.D.; DR. IRWIN BLISS,
M.D.; DR. PATRICK ZACCALINI; DR. JOHN
HOWARD, M.D.; DR. ALLEN BURSK, M.D.;
Real Parties In Interest.**

PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT FOR THE STATE OF CALIFORNIA

Elizabeth Warne
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Petitioner, Pro Per



QUESTIONS PRESENTED FOR REVIEW

(1) Was petitioner denied due process of law when the Superior Court decided a demurrer on missing court records? Should the court have first reviewed the records? Did the doctrine of stare decisis mandate the Supreme Court For The State Of California issue a writ of mandamus directing the Superior Court to vacate its orders?

(2) Did the Liljeberg doctrine mandate the Supreme Court For The State Of California enter an order directing the Honorable Judge Ross of the Superior Court Of California disqualify himself from all further proceedings and vacate his orders?

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IN THE SUPREME COURT OF THE UNITED STATES

October Term 1990

ELIZABETH WARNE, Petitioner,

v.

SUPERIOR COURT OF CALIFORNIA, Respondent,

v.

KAISER PERMANENTE MEDICAL CENTER;
SOUTHERN CALIFORNIA PERMANENTE MEDICAL
CENTER; KAISER SELF INSURANCE PROGRAM;
MICHAEL STOLZBERG AND STOLZBERG &
SPENCER; DR. JOHN SELLMAN, M.D.; DR.
IRWIN BLISS, M.D.; DR. PATRICK
ZACCALINI; DR. JOHN HOWARD, M.D.; DR. ALLEN
BURSK, M.D., Real Parties In Interest

**PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT FOR THE STATE OF CALIFORNIA**

Elizabeth Warne, appearing Pro Per,
respectfully requests the Honorable Court
for a writ of certiorari issue to review
the judgement and opinion of the Supreme
Court for the State of California.

OPINIONS BELOW

The Second Appellate District entered orders denying the writ on July 10, 1990, and July 16, 1990. These orders have been reprinted in appendix hereto on pages A-1 and A-3, respectively.

The Supreme Court of California entered orders denying review on August 22, 1990 and August 29, 1990, reprinted in appendix hereto, pages A-2 and A-4, respectively.

JURISDICTION

Jurisdiction of this Court is invoked pursuant to 28 U.S.C. 1257(a).

The judgements of the Supreme Court for the State of California were entered on August 22, 1990 and August 29, 1990.

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution (U.S. Const. Amend. XIV) provides in pertinent part:

No state shall...deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

After an accident, the real parties in interest failed to adequately diagnose the medical condition of petitioner, but instead shuttled petitioner back and forth between doctors.

This shuttling caused petitioner to loose her memory, and resulted in many other forms of injury as well.

Between November of 1989 and April 1990, petitioner regained her memory.

Without fully regaining her faculties, petitioner filed a malpractice action.

Pleadings filed by petitioner were missing from court files, as shown in appendix pages A-5 and A-6, and judges were ruling for defendants without the benefit of the pleadings which were filed

by petitioner.

Defendants had a judge, with personal interest in the case, grant the demurrer. Demurrer was granted by the judge without disclosing his personal interest.

Even though records and files revealed the contrary, one defendant had summons squashed for improper service, in spite of his being properly served.

REASONS FOR GRANTING THE WRIT

I.

The decision of the Supreme Court Of California to uphold the actions of the Superior Court on the missing court files violates petitioner's right to due process.

The instant case presents somewhat of a novel claim in which the constitutional right of access to the courts is implicated. Most cases involving this right have arisen in the context of a prisoner's right of access to the courts.

Bounds v. Smith, 430 U.S. 817, 97 S.Ct. 1491, 52 L.Ed.2d 72 (1971). The applications of constitutional rights, however, do not remain static. Clear precedent exists indicating that the constitutional right of access extends to

the circumstances in the present case.

The Due Process Clause creates substantive rights that are not explicit in the first ten amendments Roe v. Wade, 410 U.S. 113, 152-153, 93 S.Ct. 705, 726-727, 35 L.Ed.2d 147 (1973). Most of these rights derive directly from the Bill of Rights. See Griswold v. Connecticut, 381 U.S. 479, 484, 85 S.Ct. 1678, 1681, 14 L.Ed.2d 510 (1965). Under the Due Process Clause, a litigant has the right not to be denied his or her right of access to courts and review without due process of law. In Baker v. McCollan, 443 U.S. 137, 99 S.Ct. 2689, 61 L.Ed.2d 433 (1979), this Court held the Fourteenth Amendment protects deprivation without due process of law.

In Martinez v. California, 62 L.Ed.2d

481 (1980), this Court stated that when there is a lack of knowledge on the part of the government, the officials cannot be deemed to have deprived a person of due process within the meaning of the Fourteenth Amendment. In conformity with its prior practices, this Court has stated that "the right of access to the courts is indeed but one aspect of the right to petition". California Motor Transport Co. v. Trucking Unlimited, 404 U.S. 508, 510, 92 S.Ct. 609, 611, 30 L.Ed.2d 642 (1977), noting that it is "among the most precious of the liberties safeguarded by the Bill Of Rights", United Mine Workers v. Illinois State Bar Association, 389 U.S. 217, 222, 88 S.Ct. 353, 356, 19 L.Ed. 426 (1967), and that it has "a sanctity and a sanction not

permitting dubious intrusions" Thomas v. Collins, 323 U.S. 516, 530, 65 S.Ct. 315, 322, 89 L.Ed. 430 (1945). As an aspect of the First Amendment Right To Petition, the right of access to the courts shares this "preferred place" in our hierarchy of constitutional freedoms and values.

In the instant case, as set forth in Appendix page A-5, the Clerk of the Court certified that court records were not in the court files and were missing. By not having all documents on file, the Clerk of the Court denied petitioner "free and unhampered access to the courts", United States ex rel. Cleggett v. Pate, 229 F.Supp. 818, 821-22 (N.D. Ill. 1964). These missing records caused service of summons to be squashed and demurrers granted, which would not have happened

had the records been there. Due process mandated the California Supreme Court enter an order vacating all orders entered by the Superior Court without the benefit of the Court Records.

This Court held in Breithaupt v. Abram, 77 S.Ct. 408, 352 U.S. 432, 1 L.Ed.2d 448 (1957) that due process is not measured by the yardstick of personal reaction or the sphygmogram of the most sensitive person, but by that whole community sense of decency and fairness that has been woven by common experience into the fabric of acceptable conduct. Putting it in the terms of the lay person, this "whole community sense of decency and fairness" mandates court clerks have complete files and judges review all of the papers on file before

deciding a case. It shocks the sense of fundamental fairness to learn that a judge decided a case without the benefit of all the records and files in that case. The substantive component of due process bars certain governmental actions "regardless of the fairness of the procedures used to implement them", Daniels v. Williams, 474 U.S. 327, 106 S.Ct. 662, 665, 88 L.Ed.2d 662 (1986), and to make a determination as to whether a right protected by the guarantee of substantive due process has been violated, the court must "balance the 'liberty of the individual' and 'the demands of organized society'", Youngberg v. Romeo, 457 U.S. 307, 320, 102 S.Ct. 2452, 2460, 73 L.Ed.2d 28 (1982) (quoting Poe v. Ullman, 367 U.S. 497, 542, 81

S.Ct. 1752, 1776, 6 L.Ed.2d 989 (1961) (Harlan, J., dissenting)). These standards mandate the Court issue a writ of certiorari to review the judgement of the Supreme Court of California because the court, through "dubious intrusions" Thomas, supra, denied petitioner due process of the law.

II.

The Doctrine Of Stare Desisis mandated the Supreme Court Of California enter an Order recusing Judge Ross due to a conflict of interest and vacate his orders.

Attorney Horner was a former employee of Judge Ross and, due to certain financial disputes between Judge Ross and Horner which either has been or

will be under litigation, both of them have had bad blood amongst each other. Putting it in simple terms, each hates the other to the point they will do anything to hurt one another. Judge Ross was assigned the proceedings on the demurrer for defendant Howard. Without disclosing the conflict of interest, he granted the demurrer because, in doing so, would favorably affect attorney Horner, which favor Judge Ross seeks.

Courts in several cases have held that, in determining whether a judge should be disqualified, an objective "reasonable person" standard should be used to determine whether a judge's impartiality could reasonably be questioned. To accomplish justice, courts have the inherent power to vacate their

judgements, Klapprott v. United States, 335 U.S. 601, 614-15, 93 L.Ed. 266, 69 S.Ct. 384 (1949), but this should only be done in "extraordinary circumstances", Ackerman v. United States, 340 U.S. 193, 95 L.Ed. 207, 71 S.Ct. 209 (1950).

First it is interesting to note that the Judge and attorney, who hate each other, failed to bring this to the attention of the parties involved.

In fact, they went out of their way to conceal this, by the filing of Appendix page A-7 and "not serving this document on all parties". Why would two people with such bad blood between each other do this? What is the reason for concealing the facts and not bringing this matter before the hearing in a timely manner?

There seems to be no reason, except

in order to conceal the facts. This Court stated in Liljeberg v. Health Services Corp., 486 U.S. 847, 100 L.Ed.2d 855, 878, 108 S.Ct. 2194 (1988), that "the guiding consideration is that the administration of justice should reasonably appear to be disinterested as well as be so in fact". Public Utilities Comm'n of D.C. v. Pollack, 343 U.S. 451, 466-67, 96 L.Ed. 1068, 72 S.Ct. 813 (1952) (Franfurter, J. in chambers). To perform its high function in the best way, "justice must satisfy the appearance of justice", In Re Murchison, 349 U.S. 133, 136, 99 L.Ed. 942, 75 S.Ct. 623 (1955), and here one can smell a rat because the appearance of justice is not satisfied.

A writ should be issued by this Court

to review the order and to rectify the wrongdoing caused to petitioner by judicial impropriety.

CONCLUSION

Therefore, petitioner respectfully requests that this court grant the petition and issue the writ of certiorari.

Respectfully submitted,

Elizabeth J. Warne
Elizabeth Warne, Pro Per

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IN THE COURT OF APPEAL OF THE STATE OF
CALIFORNIA - SECOND APPELLATE DISTRICT
DIVISION FOUR

ELIZABETH MARNE,) No. B051311
Petitioner,)
v.) (Super.Ct.No.C693186)
) (Edward Ross, Judge;
) Ronald Sohigian, Judge)
)
THE SUPERIOR COURT) ORDER
OF LOS ANGELES CO.,)
)
Respondent,)
)
KAISER PERM., [etc])
et al.,)
)
Real Parties In Interest.) [Filed July 10, 1990]

THE COURT:*

The petition for writ of mandate filed July 3, 1990, has been read and considered and is denied for failure to demonstrate entitlement to extraordinary relief.

The petition does not state the procedural history of the underlying action with sufficient particularity to permit writ review. Neither does the petition provide an adequate record for review. (See Cal. Rules of court, rule 56(c).)

s/ Woods, Goertzen and Epstein
*WOODS (A), P.J., GOERTZEN, J., EPSTEIN, J.

**ORDER DENYING REVIEW
AFTER JUDGEMENT BY THE COURT OF APPEAL**

Second Appellate District, Division Four, No. B051311

S016606

**IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA**

IN BANK

[Filed August 22, 1990]

ELIZABETH WARNE, Petitioner,

v.

LOS ANGELES COUNTY SUPERIOR COURT, Respondent

KAISER PERMANENTE ET AL, Real Parties in Interest

Petition for review DENIED.

s/ Lucas

Chief Justice

[July 16, 1990]
"X-REF B051311-Div 4-W"

"DENIED, s/ Ross, J.;
Gates, J.; Fukuto, J.
For the Court"

NO: B051351

IN THE COURT OF APPEAL STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION: Two

Elizabeth Warne,) NO: _____
)
 Petitioner,)
 vs) Superior Court #C693186
) Judge: Sohigian
 Superior Court Of)
 California, Los)
 Angeles County,)
) [Filed July 6, 1990]
 Respondent.)
)

PETITION FOR A WRIT OF MANDATE

Elizabeth Warne
1035 S. Norton Avenue
Apartment 3
Los Angeles, CA 90019

213-935-9464

Petitioner, Pro Se

A3

**ORDER DENYING REVIEW
AFTER JUDGEMENT BY THE COURT OF APPEAL**

**Second Appellate District, Division Two, No. B051351
S016698**

**IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA**

IN BANK

[Filed August 29, 1990]

ELIZABETH WARNE, Petitioner,

v.

LOS ANGELES COUNTY SUPERIOR COURT, Respondent

KAISER PERMANENTE MEDICAL CENTER, Real Party In Interest

Petition for review DENIED.

s/ Lucas

Chief Justice

SUPERIOR COURT OF THE STATE OF
CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

ELIZABETH WARNE,) NO. C 693186
Plaintiff,)
vs.) CERTIFICATE OF
KAISER-PERMANENTE) CLERK
MEDICAL CENTER,)
et al.,)
Defendants.)

)

I, FRANK S. ZOLIN, County Clerk/Executive Officer of the Superior Court of the State of California for the County of Los Angeles, do hereby certify:

That I am the duly authorized custodian of the records of the above court;

That on May 7, 1990, there were in excess of 20,000 documents awaiting to be placed in their respective case file folders, in Room .112 of the County Courthouse;

That the register of Action pages in the above subject matter reveal that after the entry made for April 26, 1990, an entry was made for May 2, 1990 and May 7, 1990, respectively;

That following the entry made for May 7, 1990, two (2) entries were made for

April 20, 1990 and one (1) entry was made for April 23, 1990, respectively;

That following the entry made for April 23, 1990, an entry was made for May 19, 1990 and May 31, 1990, respectively, and a copy of said Register of Action page has been attached as Exhibit "A";

That according to the normal practices of the Register of Actions Section, in Room 118 of the County Courthouse, the majority of Register of Action entries are made from loose documents that have yet to be placed inthe case file.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Superior Court this 19th day of June 1990.

FRANK S. ZOLIN,County Clerk/
Executive Officer of the
Superior Court of the State
of California for the County
of Los Angeles.

Dated June 19, 1990 By s/ A.W. Hebert
A.W. Hebert Deputy

Robert B. Horner
MOORE, SORENSEN & HORNER
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Attorneys for Irwin Bliss, M.D.

SUPERIOR COURT OF THE STATE OF
CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

ELIZABETH WARNE,

Plaintiff,
vs.

MICHAEL STOLZBERG,
STOLZBURG & SPENCER,
JOHN SELLMAN, M.D.,
IRWIN BLISS, M.D.,
PATRICK ZACCALINI,
M.D., JOHN HOWARD,
M.D., and DOES 1-100,

Defendants.

CASE NO.C693186

AFFIDAVIT OF
PREJUDICE
(CCP § 170.6)

Date: June 22, 1990
Time: 9:00 a.m.
Dept: 84
Trial: None

[Filed June 15, 1990]

I, Robert B. Horner declare as
follows:

I am the attorney for defendant IRWIN BLISS, M.D. in the above-entitled action. The Honorable EDWARD ROSS is prejudiced against the defendant and his attorney such that he believes that he cannot have a fair or impartial trial or hearing before such judge.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 25th day of May, 1990 at Beverly Hills, California.

s/ Robert B. Horner
Robert B. Horner